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CITY OF HUNTINGTON BEACH,  
TREVOR JACKSON and CASEY THOMAS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA

ANGELA HERNANDEZ, individually  
and as a successor in interest to  
Steven Schiltz, deceased,

Plaintiff,

vs.

CITY OF HUNTINGTON BEACH,  
and DOES 1-10, inclusive,

Defendants.

Case No. 8:17-cv-01257 AG (KESx)

Hon. District Judge Andrew J. Guilford

**STIPULATION FOR ENTRY OF  
PROTECTIVE ORDER RE  
CONFIDENTIAL DOCUMENTS;  
~~PROPOSED~~ ORDER**

**TO THE HONORABLE COURT:**

By and through their counsel of record in this action, Plaintiff Angela Hernandez (“Plaintiff”) and Defendants CITY OF HUNTINGTON BEACH (“City”), TREVOR JACKSON and CASEY THOMAS (collectively “Defendants”)

1 – the parties – hereby stipulate for the purpose of jointly requesting that the  
2 honorable Court enter a protective order re confidential documents in this matter  
3 [and pursuant to Fed. R. Civ. P. 5.2, 7, and 26, as well as U.S. Dist. Ct., C.D. Cal.,  
4 Local Rules 7-1 and 52-4.1; and any applicable Orders of the Court] – as follows:

5 **GOOD CAUSE STATEMENT**

6 **1. GOOD CAUSE STATEMENT.**

7 **1.1. Contentions re Harm from Disclosure of Confidential Materials.**

8 Defendants contend that there is good cause and a particularized need for a  
9 protective order to preserve the interests of confidentiality and privacy in peace  
10 officer personnel file records and associated investigative or confidential records for  
11 the following reasons.

12 First, Defendants contend that peace officers have a federal privilege of  
13 privacy in their personnel file records: a reasonable expectation of privacy therein  
14 that is underscored, specified, and arguably heightened by the *Pitchess* protective  
15 procedure of California law. *See Sanchez v. Santa Ana Police Dept.*, 936 F.2d 1027,  
16 1033-1034 (9th Cir. 1990); *Hallon v. City of Stockton*, 2012 U.S. Dist. LEXIS  
17 14665, \*2-3, 12-13 (E.D. Cal. 2012) (concluding that “while “[f]ederal law applies  
18 to privilege based discovery disputes involving federal claims,” the “state privilege  
19 law which is consistent with its federal equivalent significantly assists in applying  
20 [federal] privilege law to discovery disputes”); *Soto v. City of Concord*, 162 F.R.D.  
21 603, 613 n. 4, 616 (N.D. Cal. 1995) (peace officers have constitutionally-based  
22 “privacy rights [that] are not inconsequential” in their police personnel records); cf.  
23 Cal. Penal Code §§ 832.7, 832.8; Cal. Evid. Code §§ 1040-1047. Defendants  
24 further contend that uncontrolled disclosure of such personnel file information can  
25 **threaten the safety of non-party witnesses, officers, and their**  
26 **families/associates.**

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1           Second, Defendants contend that municipalities and law enforcement  
2 agencies have federal deliberative-executive process privilege, federal official  
3 information privilege, federal law enforcement privilege, and federal attorney-client  
4 privilege (and/or attorney work product protection) interests in the personnel files of  
5 their peace officers – particularly as to those portions of peace officer personnel files  
6 that contain critical self-analysis, internal deliberation/decision-making or  
7 evaluation/analysis, or communications for the purposes of obtaining or rendering  
8 legal advice or analysis – potentially including but not limited to  
9 evaluative/analytical portions of Internal Affairs type records or reports,  
10 evaluative/analytical portions of supervisory records or reports, and/or reports  
11 prepared at the direction of counsel, or for the purpose of obtaining or rendering  
12 legal advice. *See Sanchez*, 936 F.2d at 1033-1034; *Maricopa Audubon Soc’y v.*  
13 *United States Forest Serv.*, 108 F.3d 1089, 1092-1095 (9th Cir. 1997); *Soto*, 162  
14 F.R.D. at 613, 613 n. 4; *Kelly v. City of San Jose*, 114 F.R.D. 654, 668-671 (N.D.  
15 Cal. 1987); *Tuite v. Henry*, 181 F.R.D. 175, 176-177 (D. D.C. 1998); *Hamstreet v.*  
16 *Duncan*, 2007 U.S. Dist. LEXIS 89702 (D. Or. 2007); *Admiral Ins. Co. v. United*  
17 *States Dist. Ct.*, 881 F.2d 1486, 1492, 1495 (9th Cir. 1988). Defendants further  
18 contend that such personnel file records are restricted from disclosure by the public  
19 entity’s custodian of records pursuant to applicable California law and that  
20 uncontrolled release is likely to result in needless intrusion of officer privacy;  
21 impairment in the collection of third-party witness information and statements and  
22 related legitimate law enforcement investigations/interests; and a chilling of open  
23 and honest discussion regarding and/or investigation into alleged misconduct that  
24 can erode a public entity’s ability to identify and/or implement any remedial  
25 measures that may be required.

26           Third, Defendants contend that, since peace officers do not have the same  
27 rights as other private citizens to avoid giving compelled statements, it is contrary to  
28 the fundamental principles of fairness to permit uncontrolled release of officers’

1 compelled statements. *See generally Lybarger v. City of Los Angeles*, 40 Cal.3d  
2 822, 828-830 (1985); cf. U.S. Const., amend V.

3 Accordingly, Defendants contend that, without a protective order preventing  
4 such, production of confidential records in the case can and will likely substantially  
5 impair and harm defendant public entity's interests in candid self-critical analysis,  
6 frank internal deliberations, obtaining candid information from witnesses,  
7 preserving the safety of witnesses, preserving the safety of peace officers and peace  
8 officers' families and associates, protecting the privacy officers of peace officers,  
9 and preventing pending investigations from being detrimentally undermined by  
10 publication of private, sensitive, or confidential information – as can and often does  
11 result in litigation.

12 1.2. Plaintiff does not agree with and does not stipulate to Defendants'  
13 contentions herein above, and nothing in this Stipulation or its associated Order  
14 shall resolve the parties' disagreement, or bind them, concerning the legal  
15 statements and claimed privileges set forth above.

16 However, Plaintiff agrees that there is Good Cause for a Protective Order so  
17 as to preserve the respective interests of the parties without the need to further  
18 burden the Court with such issues. Specifically, the parties jointly contend that,  
19 absent this Stipulation and its associated Protective Order, the parties' respective  
20 privilege interests may be impaired or harmed, and that this Stipulation and its  
21 associated Protective Order may avoid such harm by permitting the parties to  
22 facilitate discovery with reduced risk that privileged and/or sensitive/confidential  
23 information will become matters of public record.

24 1.3. The parties jointly contend that there is typically a particularized need  
25 for protection as to any medical or psychotherapeutic records and autopsy  
26 photographs, because of the privacy interests at stake therein. Because of these  
27 sensitive interests, a Court Order should address these documents rather than a  
28 private agreement between the parties.

1           1.4. The parties therefore stipulate that there is Good Cause for, and hereby  
2 jointly request that the honorable Court issue/enter, a Protective Order re  
3 confidential documents consistent with the terms and provisions of this Stipulation.  
4 However, the entry of a Protective Order by the Court pursuant to this Stipulation  
5 shall not be construed as any ruling by the Court on the aforementioned legal  
6 statements or privilege claims in this section (§ 1), nor shall this section be  
7 construed as part of any such Court Order.

8           **A. PURPOSES AND LIMITATIONS.**

9           Disclosure and discovery activity in this action are likely to involve  
10 production of confidential, proprietary, or private information for which special  
11 protection from public disclosure and from use for any purpose other than  
12 prosecuting or defending this litigation would be warranted. Accordingly, the  
13 parties hereby stipulate to and petition the court to enter the following Stipulation  
14 and an associated Order.

15           The parties acknowledge that this Stipulation and associated Order does not  
16 confer blanket protections on all disclosures or responses to discovery and that the  
17 protection it affords extends only to the specified information or items that are  
18 entitled to treatment as confidential.

19           The parties further acknowledge, as set forth below, that this Stipulation and  
20 Order creates no entitlement to file confidential information under seal. Central  
21 District Local Rules 79-5.1 and 79-5.2 set(s) forth the procedures that must be  
22 followed and reflects the standards that will be applied when a party seeks  
23 permission from the court to file material under seal.

24           Nothing in this Stipulation or associated Order shall be construed so as to  
25 require or mandate that any Party disclose or produce privileged information or  
26 records that could be designated as Confidential Documents/Protected Material  
27 hereunder.

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1                   **STIPULATION FOR PROTECTIVE ORDER RE CONFIDENTIAL**  
2   **RECORDS**

3   **2. DEFINITIONS.**

4           2.1. Party: any party to this action, including all of its officers, directors,  
5 employees, agents, consultants, retained experts, house counsel and outside counsel  
6 (and/or the support staff thereof).

7           2.2. Disclosure or Discovery Material: all items or information, regardless  
8 of the medium or manner generated, stored or maintained (including, among other  
9 things, testimony, transcripts, or tangible things) that are produced – or generated in  
10 disclosures or responses to discovery – by any Party in this matter.

11          2.3. “Confidential” Information or Items: information (regardless of the  
12 medium or how generated, stored, or maintained) or tangible things that qualify for  
13 protection under standards developed under Federal Rule of Civil Procedure 26(c)  
14 and/or applicable federal privileges. This material includes, but is not limited to,  
15 medical records, psychotherapeutic records, and autopsy photographs; as well as  
16 peace officer personnel records as defined by California Penal Code sections 832.8,  
17 832.5, 832.7 and the associated case law; and other similar confidential records  
18 designated as such.

19          2.4. Receiving Party: a Party that receives Disclosure or Discovery  
20 Material from a Producing Party, including a Party that has noticed or subpoenaed  
21 and is taking a deposition or comparable testimony.

22          2.5. Producing Party: a Party or non-party that produces Disclosure or  
23 Discovery Material in this action, including a Party that is defending a deposition  
24 noticed or subpoenaed by another Party; additionally, for the limited purpose of  
25 designating testimony subject to this Stipulation and Order pursuant to section  
26 6.2(b) (infra), a “Producing Party” shall also be construed to include a Party that is  
27 attending and/or participating in a non-party deposition noticed/subpoenaed by  
28 another Party.

1           2.6. Designating Party: a Party or non-party public entity employer of a  
2 Party that designates information or items that it produces in disclosures or in  
3 responses to discovery as “CONFIDENTIAL.”

4           2.7. Protected Material: any Disclosure or Discovery Material that is  
5 designated as “CONFIDENTIAL” under the provisions of this Stipulation and  
6 Protective Order. (The term “Confidential Document” shall be synonymous with  
7 the term “Protected Material” for the purposes of this Stipulation and any associated  
8 Protective Order.)

9           2.8. Outside Counsel: attorneys who are not employees of a Party but who  
10 are retained to represent or advise a Party in this action (as well as their support  
11 staffs).

12           2.9. House Counsel: attorneys who are employees of a Party (as well as  
13 their support staffs).

14           2.10. Counsel (without qualifier): Outside Counsel and House Counsel (as  
15 well as their support staffs).

16           2.11. Expert: a person with specialized knowledge or experience in a matter  
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
18 an expert witness or as a consultant in this action and who is not a past or a current  
19 employee of a Party and who, at the time of retention, is not anticipated to become  
20 an employee of a Party or a competitor of a Party’s; as well as any person retained,  
21 designated, or disclosed by a Party as an expert pursuant to Federal Rule of Civil  
22 Procedure 26(a)(2) or other applicable discovery Rules or statutes.

23           2.12. Professional Vendors: persons or entities that provide litigation  
24 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
25 demonstrations; and/or organizing, storing, retrieving data in any form or medium;  
26 etc.); and their employees and subcontractors.

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1     **3.     SCOPE OF PROTECTION.**

2             The protections conferred by this Stipulation and its associated Order cover  
3 not only Protected Material/Confidential Documents (as defined above), but also (1)  
4 any information copied or extracted from Protected Material; (2) all copies,  
5 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
6 conversations, or presentations by Parties or their Counsel that might reveal  
7 Protected Material. However, the protections conferred by this Stipulation and its  
8 associated Order do not cover the following information: (a) any information that is  
9 in the public domain at the time of disclosure to a Receiving Party or becomes part  
10 of the public domain after its disclosure to a Receiving Party as a result of  
11 publication not involving a violation of this Order, including becoming part of the  
12 public record through trial or otherwise; and (b) any information known to the  
13 Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
14 disclosure from a source who obtained the information lawfully and under no  
15 obligation of confidentiality to the Designating Party.

16             Any use of Protected Material at trial shall not be governed by this Order, but  
17 may be governed by a separate agreement or order.

18             Any use of Protected Material at trial shall be governed by the Orders of the  
19 trial judge: this Stipulation and its associated Protective Order do(es) not govern the  
20 use of Protected Material at trial.

21             Nothing in this Stipulation or its associated Order shall be construed as  
22 binding upon the Court or its court personnel, who are subject only to the Court's  
23 internal procedures regarding the handling of materials filed or lodged, including  
24 materials filed or lodged under seal.

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1     **4.     DURATION OF PROTECTION.**

2             Even after final disposition of this litigation, the confidentiality obligations  
3 imposed by this Order shall remain in effect until a Designating Party agrees  
4 otherwise in writing or a court order otherwise directs.

5             Final disposition shall be deemed to be the later of (1) dismissal of all claims  
6 and defenses in this action, with or without prejudice; and (2) final judgment herein  
7 after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
8 reviews of this action, including the time limits for filing any motions or  
9 applications for extension of time pursuant to applicable law.

10    **5.     DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**  
11    **DOCUMENTS.**

12             5.1.   Exercise of Restraint and Care in Designating Material for Protection.

13             Each Party or non-party that designates information or items for protection  
14 under this Stipulation and its associated Order must take care to limit any such  
15 designation to specific material that qualifies under the appropriate standards. A  
16 Designating Party must take care to designate for protection only those parts of  
17 material, documents, items, or oral or written communications that qualify – so that  
18 other portions of the material, documents, items or communications for which  
19 protection is not warranted are not swept unjustifiably within the ambit of this  
20 Order.

21             Mass, indiscriminate, or routine designations are prohibited. Designations  
22 that are shown to be clearly unjustified, or that have been made for an improper  
23 purpose (e.g., to unnecessarily encumber or retard the case development process, or  
24 to impose unnecessary expenses and burdens on other parties), expose the  
25 Designating Party to sanctions.

26             If it comes to a Party's or a non-party's attention that information or items  
27 that it designated for protection do not qualify for protection at all, or do not qualify  
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1 for the level of protection initially asserted, that Party or non-party must promptly  
2 notify all other parties that it is withdrawing the mistaken designation.

3 5.2. Manner and Timing of Designations. Except as otherwise provided in  
4 this Order, or as otherwise stipulated or ordered, material that qualifies for  
5 protection under this Order must be clearly so designated before the material is  
6 disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (apart from transcripts of  
9 depositions or other pretrial or trial proceedings, and regardless of whether produced  
10 in hardcopy or electronic form), that the Producing Party affix the legend  
11 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion  
12 or portions of the material on a page qualifies for protection, the Producing Party  
13 also must clearly identify the protected portion(s) (e.g., by making appropriate  
14 markings in the margins) and must specify, for each portion that it is  
15 “CONFIDENTIAL.” The placement of such “CONFIDENTIAL” stamp on such  
16 page(s) shall not obstruct the substance of the page’s (or pages’) text or content.

17 A Party or Non-Party that makes original documents or materials available for  
18 inspection need not designate them for protection until after the inspecting Party has  
19 indicated which material it would like copied and produced. During the inspection  
20 and before the designation, all of the material made available for inspection shall be  
21 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
22 documents it wants copied and produced, the Producing Party must determine which  
23 documents, or portions thereof, qualify for protection under this Order. Then,  
24 before producing the specified documents, the Producing Party must affix the  
25 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a  
26 portion or portions of the material on a page qualifies for protection, the Producing  
27 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
28 markings in the margins).

1 (b) for testimony given in deposition or in other pretrial or trial  
2 proceedings, that the Party or non-party offering or sponsoring the testimony  
3 identify on the record, before the close of the deposition, hearing, or other  
4 proceeding, all protected testimony, and further specify any portions of the  
5 testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify  
6 separately each portion of testimony that is entitled to protection, and when it  
7 appears that substantial portions of the testimony may qualify for protection, the  
8 Producing Party may invoke on the record (before the deposition or proceeding is  
9 concluded) a right to have up to twenty (20) days to identify the specific portions of  
10 the testimony as “CONFIDENTIAL.” Only those portions of the testimony that are  
11 appropriately designated as “CONFIDENTIAL” for protection within the 20 days  
12 shall be covered by the provisions of this Stipulation and its associated Protective  
13 Order.

14 The court reporter must affix to each such transcript page containing  
15 Protected Material the legend “CONFIDENTIAL,” as instructed by the Producing  
16 Party.

17 (c) for information produced in some form other than documentary, and for  
18 any other tangible items (including but not limited to information produced on disc  
19 or electronic data storage device), that the Producing Party affix in a prominent  
20 place on the exterior of the container or containers in which the information or item  
21 is stored the legend “CONFIDENTIAL.” If only portions of the information or item  
22 warrant protection, the Producing Party, to the extent practicable, shall identify the  
23 protected portions, specifying the material as “CONFIDENTIAL.”

24 5.3. Inadvertent Failures to Designate. If timely corrected (preferably,  
25 though not necessarily, within 30 days of production or disclosure of such material),  
26 an inadvertent failure to designate qualified information or items as  
27 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to  
28 secure protection under this Stipulation and its associated Order for such material.

1 If material is appropriately designated as “CONFIDENTIAL” after the  
2 material was initially produced, the Receiving Party, on timely notification of the  
3 designation, must make reasonable efforts to assure that the material is treated in  
4 accordance with this Stipulation and its associated Order.

5 5.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party  
6 shall not alter, edit, or modify any Protected Material so as to conceal, obscure, or  
7 remove a “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party  
8 take any other action so as to make it appear that Protected Material is not subject to  
9 the terms and provisions of this Stipulation and its associated Order. However,  
10 nothing in this section shall be construed so as to prevent a Receiving Party from  
11 challenging a confidentiality designation subject to the provisions of section 6, infra.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

13 6.1. Timing of Challenges. Any Party or Non-Party may challenge a  
14 designation of confidentiality at any time that is consistent with the Court's  
15 Scheduling Order. Unless a prompt challenge to a Designating Party's  
16 confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
17 unnecessary economic burdens, or a later significant disruption or delay of the  
18 litigation, a Party does not waive its right to challenge a confidentiality designation  
19 by electing not to mount a challenge promptly after the original designation is  
20 disclosed.

21 6.2. Meet and Confer. Prior to challenging a confidentiality designation, a  
22 Challenging Party shall initiate a dispute resolution process by providing written  
23 notice of each specific designation it is challenging, and describing the basis (and  
24 supporting authority or argument) for each challenge. To avoid ambiguity as to  
25 whether a challenge has been made, the written notice must recite that the challenge  
26 to confidentiality is being made in accordance with this specific paragraph of the  
27 associated Protective Order. The parties shall attempt to resolve each challenge in  
28 good faith and must begin the process by conferring directly (in voice to voice

1 dialogue, either in person, telephonically, or by other comparable means, but not by  
2 correspondence) within 14 days of the date of service of notice.

3 In conferring, the Challenging Party must explain the specific basis for its  
4 belief that the confidentiality designation was not proper and must give the  
5 Designating Party an opportunity to review the designated material, to reconsider  
6 the circumstances, and, if no change in designation is offered, to explain the basis  
7 for the chosen designation. A Challenging Party may proceed to the next stage of  
8 the challenge process only if it has engaged in this meet and confer process first or  
9 establishes that the Designating Party is unwilling to participate in the meet and  
10 confer process in a timely manner.

11 Frivolous challenges, and those challenges made for an improper purpose  
12 (e.g., to harass or impose unnecessary expenses and burdens on other parties), may  
13 expose the Challenging Party to sanctions.

14 6.3. Judicial Intervention. If the Parties cannot resolve a confidentiality  
15 challenge without court intervention, the Challenging Party shall file and serve a  
16 motion to remove confidentiality (under the applicable rules for filing and service of  
17 discovery motions) within 14 days of the parties agreeing that the meet and confer  
18 process will not resolve their dispute, or by the first day of trial of this matter,  
19 whichever date is earlier – unless the parties agree in writing to a longer time.

20 The parties must strictly comply with Central District Local Rules 37-1 and  
21 37-2 (including the joint stipulation re discovery dispute requirement) in any motion  
22 associated with this Protective Order, or alternatively, agree to use the informal  
23 telephonic procedure described on the Court's website.

24 Each such motion must be accompanied by a competent declaration affirming  
25 that the movant has complied with the meet and confer requirements imposed in the  
26 preceding paragraph. In addition, the Challenging Party may file a motion  
27 challenging a confidentiality designation at any time if there is good cause for doing  
28 so, including a challenge to the designation of a deposition transcript or any portions

1 thereof. Any motion brought pursuant to this provision must be accompanied by a  
2 competent declaration affirming that the movant has complied with the meet and  
3 confer requirements imposed by the preceding paragraph.

4 The burden of persuasion in any such challenge proceeding shall be on the  
5 Designating Party, regardless of whether the Designating Party is the moving party  
6 or whether such Party sought or opposes judicial intervention. Frivolous challenges,  
7 and those made for an improper purpose (e.g., to harass or impose unnecessary  
8 expenses and burdens on other parties) may expose the Challenging Party to  
9 sanctions. Unless the Designating Party has waived the confidentiality designation  
10 by failing to oppose a motion to remove confidentiality as described above, all  
11 parties shall continue to afford the material in question the level of protection to  
12 which it is entitled under the Producing Party's designation until the court rules on  
13 the challenge.

14 6.4. Withdrawal of "CONFIDENTIAL" Designation. At its discretion, a  
15 Designating Party may remove Protected Material/Confidential Documents from  
16 some or all of the protections and provisions of this Stipulation and its associated  
17 Order at any time by any of the following methods:

18 (a) Express Written Withdrawal. A Designating Party may withdraw a  
19 "CONFIDENTIAL" designation made to any specified Protected Material  
20 /Confidential Documents from some or all of the protections of this Stipulation and  
21 its associated Order by an express withdrawal in a writing signed by such Party (or  
22 such Party's Counsel, but not including staff of such Counsel) that specifies and  
23 itemizes the Disclosure or Discovery Material previously designated as Protected  
24 Material/Confidential Documents that shall no longer be subject to all or some of  
25 the provisions of this Stipulation and Order. Such express withdrawal shall be  
26 effective when transmitted or served upon the Receiving Party. If a Designating  
27 Party is withdrawing Protected Material from only some of the provisions/  
28 protections of this Stipulation and Order, such Party must state which specific

1 provisions are no longer to be enforced as to the specified material for which  
2 confidentiality protection hereunder is withdrawn: otherwise, such withdrawal shall  
3 be construed as a withdrawal of such material from all of the protections/provisions  
4 of this Stipulation and Order;

5 (b) Express Withdrawal on the Record. A Designating Party may  
6 withdraw a “CONFIDENTIAL” designation made to any specified Protected  
7 Material/Confidential Documents from all of the provisions/protections of this  
8 Stipulation and its associated Order by verbally consenting in court proceedings on  
9 the record to such withdrawal – provided that such withdrawal specifies the  
10 Disclosure or Discovery Material previously designated as Protected Material/  
11 Confidential Documents that shall no longer be subject to any of the provisions of  
12 this Stipulation and Order. A Designating Party is not permitted to withdraw  
13 Protected Material from only some of the protections/provisions of this Stipulation  
14 and Order by this method;

15 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A  
16 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”  
17 designation made to any specified Protected Material/Confidential Documents from  
18 all of the provisions/protections of this Stipulation and Order by either (1) making  
19 such Protected Material/Confidential Records part of the public record – including  
20 but not limited to attaching such as exhibits to any filing with the court without  
21 moving, prior to such filing, for the court to seal such records; or (2) failing to  
22 timely oppose a Challenging Party’s motion to remove a “CONFIDENTIAL”  
23 designation to specified Protected Material/Confidential Documents. Nothing in  
24 this Stipulation and Order shall be construed so as to require any Party to file  
25 Protected Material/Confidential Documents under seal, unless expressly specified  
26 herein.

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1     **7. ACCESS TO AND USE OF PROTECTED MATERIAL.**

2             7.1. Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a non-party in connection with this  
4 case only for preparing, prosecuting, defending, or attempting to settle this litigation  
5 – up to and including final disposition of the above-entitled action – and not for any  
6 other purpose, including any other litigation or dispute outside the scope of this  
7 action. Such Protected Material may be disclosed only to the categories of persons  
8 and under the conditions described in this Stipulation and its associated Order.  
9 When the above entitled litigation has been terminated, a Receiving Party must  
10 comply with the provisions of section 11, below (FINAL DISPOSITION).

11             Protected Material must be stored and maintained by a Receiving Party at a  
12 location and in a secure manner that ensures that access is limited to the persons  
13 authorized under this Stipulation and its Order.

14             7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless  
15 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
16 Receiving Party may disclose any information or item designated CONFIDENTIAL  
17 only to:

18             (a) the Receiving Party’s Outside Counsel of record in this action, as well  
19 as employees of such Counsel to whom it is reasonably necessary to disclose the  
20 information for this litigation;

21             (b) the officers, directors, and employees (including House Counsel) of the  
22 Receiving Party to whom disclosure is reasonably necessary for this litigation – each  
23 of whom, by accepting receipt of such Protected Material, thereby agree to be bound  
24 by this Stipulation and Order;

25             (c) Experts (as defined in this Stipulation and Order) of the Receiving  
26 Party to whom disclosure is reasonably necessary for this litigation – each of whom,  
27 by accepting receipt of such Protected Material, thereby agree to be bound by this  
28 Stipulation and Order;



1 (d) court reporters, their staffs, and Professional Vendors to whom  
2 disclosure is reasonably necessary for this litigation – each of whom, by accepting  
3 receipt of such Protected Material, thereby agree to be bound by this Stipulation and  
4 Order;

5 (e) during their depositions, witnesses in the action to whom disclosure is  
6 reasonably necessary – each of whom, by accepting receipt of such Protected  
7 Material, thereby agree to be bound by this Stipulation and Order. Pages of  
8 transcribed deposition testimony or exhibits to depositions that reveal Protected  
9 Material must have a confidential designation affixed by the court reporter to such  
10 pages containing Protected Material and such may not be disclosed to anyone except  
11 as permitted under this Stipulation and its Protective Order. Nothing in this  
12 Stipulation and Order shall preclude either side from allowing witnesses to read or  
13 listen to a copy of their own recorded interviews or from being shown photographs  
14 of the scene. Said witnesses shall not be provided a copy of said interview or  
15 photographs.

16 (f) the author or custodian of a document containing the information that  
17 constitutes Protected Material, or other person who otherwise possessed or knew the  
18 information.

19 (g) the Court and its staff, per paragraph 7.5.

20 7.3. Notice of Confidentiality. Prior to producing or disclosing Protected  
21 Material/Confidential Documents to persons to whom this Stipulation and its Order  
22 permits disclosure or production, except the Court and its staff (see section 7.2,  
23 supra), a Receiving Party shall provide a copy of this Stipulation and Order to such  
24 persons so as to put such persons on notice as to the restrictions imposed upon them  
25 herein: except that, for court reporters, Professional Vendors, and for witnesses  
26 being provided with Protected Material during a deposition, it shall be sufficient  
27 notice for Counsel for the Receiving Party to give the witness a verbal admonition  
28

1 (on the record, for witnesses) regarding the provisions of this Stipulation and its  
2 Order and such provisions' applicability to specified Protected Material at issue.

3 7.4. Reservation of Rights. Nothing in this Stipulation and Order shall be  
4 construed so as to require any Producing Party to designate any records or materials  
5 as "CONFIDENTIAL." Nothing in this Stipulation and Order shall be construed so  
6 as to prevent the admission of Protected Material into evidence at the trial of this  
7 action, or in any appellate proceedings for this action, solely on the basis that such  
8 Disclosure or Discovery Material has been designated as Protected  
9 Material/Confidential Documents. Notwithstanding the foregoing, nothing in this  
10 Stipulation and Order shall be construed as a waiver of any privileges or of any  
11 rights to object to the use or admission into evidence of any Protected Material in  
12 any proceeding; nor shall anything herein be construed as a concession that any  
13 privileges asserted or objections made are valid or applicable. Nothing in this  
14 Stipulation and Order shall be construed so as to prevent the Designating Party (or  
15 its Counsel or custodian of records) from having access to and using Protected  
16 Material designated by that Party in the manner in which such persons or entities  
17 would typically use such materials in the normal course of their duties or profession  
18 – except that the waiver of confidentiality provisions shall apply (see section 6.4(c),  
19 supra).

20 7.5. Requirement to Apply to File Confidential Documents Under Seal.  
21 Confidential Documents may be submitted in all law and motion proceedings before  
22 the Court if accompanied by an application to file them under seal pursuant to  
23 Federal Rules of Civil Procedure 5.2 and 26 and/or United States District Court,  
24 Central District of California Local Rules 79-5.1 and 79-5.2 (as applicable). If any  
25 Receiving Party attaches any Confidential Documents to any pleading, motion, or  
26 other paper to be filed, such Confidential Document(s) shall be accompanied by an  
27 application to file them under seal pursuant to Federal Rules of Civil Procedure 5.2  
28

1 and 26 and/or United States District Court, Central District of California Local  
2 Rules 79-5.1 and 79-5.2.

3 However, this paragraph (§ 7.5) shall not be construed so as to prevent a  
4 Designating Party or counsel from submitting, filing, lodging, or publishing any  
5 document it has previously designated as a Confidential Document without  
6 compliance with this paragraph's requirement to apply to do so under seal (i.e., a  
7 producing-disclosing party or counsel may submit or publish its own Confidential  
8 Documents without being in violation of the terms of this Stipulation and its  
9 Protective Order).

10 Furthermore, a Receiving Party shall be exempted from the requirements of  
11 this paragraph as to any specifically identified Confidential Document(s) where –  
12 prior to the submission or publication of the Confidential Document(s) at issue – the  
13 Designating Party of such specifically identified Confidential Document(s) has  
14 waived/withdrawn the protections of this Stipulation and its Order (pursuant to  
15 paragraph 6.4, supra).

16 A Receiving Party shall also be exempt from the applying to file under seal  
17 requirements of this paragraph (§ 7.5) where the Confidential Documents/Protected  
18 Material at issue is/are not documents, records, or information regarding or  
19 incorporating:

20 (1) private, personal information contained in peace officer personnel files  
21 (such as social security numbers, driver's license numbers or comparable personal  
22 government identification numbers, residential addresses, compensation or pension  
23 or personal property information, credit card numbers or credit information, dates of  
24 birth, tax records and information, information related to the identity of an officer's  
25 family members or co-residents, and comparable personal information about the  
26 officer or his family);

27 (2) any internal affairs or comparable investigation by any law  
28 enforcement agency into alleged officer misconduct; and/or

1 (3) the medical records or records of psychiatric or psychological treatment  
2 of any peace officer or party to this action.

3 This order does not apply to trial procedures.

4 Nothing in this Stipulation or in any associated Order shall be construed as  
5 any entitlement for the parties to file any documents or materials under seal; nor  
6 shall the parties' Stipulation or this Order be construed as any exemption from any  
7 of the requirements of Central District Local Rule 79-5. The parties are required to  
8 comply with the applicable Local Rules in their entirety. If the Court denies a  
9 party's request for filing material under seal, that material may be filed in the public  
10 record unless otherwise instructed by the Court.

11 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
12 **PRODUCED IN OTHER LITIGATION.**

13 If a Party is served with a subpoena or a court order issued in other litigation  
14 that compels disclosure of any information or items designated in this action as  
15 "CONFIDENTIAL," that Party must:

16 (a) promptly notify in writing the Designating Party, preferably (though not  
17 necessarily) by facsimile or electronic mail. Such notification shall include a copy  
18 of the subpoena or court order at issue;

19 (b) promptly notify in writing the party who caused the subpoena or order to  
20 issue in the other litigation that some or all of the material covered by the subpoena  
21 or order is subject to this Stipulation and its Protective Order. Such notification  
22 shall include a copy of this Stipulation and its Protective Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued  
24 by all sides in any such situation, while adhering to the terms of this Stipulation and  
25 its Order.

26 If the Designating Party timely seeks a protective order, the Party served with  
27 the subpoena or court order shall not produce any information designated in this  
28 action as "CONFIDENTIAL" before a determination by the court from which the

1 subpoena or order issued, unless the Party has obtained the Designating Party's  
2 permission. The Designating Party shall bear the burden and expense of seeking  
3 protection in that court of its confidential material – and nothing in these provisions  
4 should be construed as authorizing or encouraging a Receiving Party in this action  
5 to disobey a lawful directive from another court.

6 The purpose of this section is to ensure that the affected Party has a  
7 meaningful opportunity to preserve its confidentiality interests in the court from  
8 which the subpoena or court order issued.

9 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

10 9.1. Unauthorized Disclosure of Protected Material.

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
12 Protected Material to any person or in any circumstance not authorized under this  
13 Stipulation and Order, the Receiving Party must immediately:

- 14 (a) notify in writing the Designating Party of the unauthorized disclosures;
- 15 (b) use its best efforts to retrieve all copies of the Protected Material;
- 16 (c) inform the person or persons to whom unauthorized disclosures were  
17 made of all the terms of this Order; and
- 18 (d) request such person or persons consent to be bound by the Stipulation and  
19 Order.

20 9.2. Inadvertent Production of Privileged or Otherwise Protected Material.

21 When a Producing Party gives notice to Receiving Parties that certain  
22 inadvertently produced material is subject to a claim of privilege or other protection,  
23 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
24 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
25 may be established in an e-discovery order that provides for production without  
26 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar  
27 as the parties reach an agreement on the effect of disclosure of a communication or  
28 information covered by the attorney-client privilege or work product protection, the

1 parties may incorporate their agreement in the stipulated protective order submitted  
2 to the court.

3 **10. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

4 10.1. Filing of Protected Material.

5 Without advance written permission from the Designating Party, or a court  
6 order secured after appropriate notice to all interested persons, or per paragraph 7.5,  
7 a Receiving Party may not file in the public record in this action any Protected  
8 Material. A Party that seeks to file under seal any Protected Material must comply  
9 with the applicable Federal and Local Rules.

10 10.2. Public Dissemination of Protected Material.

11 A Receiving Party shall not publish, release, post, or disseminate Protected  
12 Material to any persons except those specifically delineated and authorized by this  
13 Stipulation and its Order (see section 7, supra); nor shall a Receiving Party publish,  
14 release, leak, post, or disseminate Protected Material/Confidential Documents to any  
15 news media, member of the press, website, or public forum (except as permitted  
16 under section 7.5 regarding filings with the court in this action and under seal).

17 **11. FINAL DISPOSITION.**

18 Unless otherwise ordered or agreed in writing by the Producing Party, within  
19 thirty (30) days after the final termination of this action (defined as the dismissal or  
20 entry of judgment by the above named court, or if an appeal is filed, the disposition  
21 of the appeal), upon written request by the Producing Party, each Receiving Party  
22 must return all Protected Material to the Producing Party – whether retained by the  
23 Receiving Party or its Counsel, Experts, Professional Vendors, agents, or any non-  
24 party to whom the Receiving Party produced or shared such records or information,  
25 except not the Court and its staff.

26 As used in this subdivision, “all Protected Material” includes all copies,  
27 abstracts, compilations, summaries or any other form of reproducing or capturing  
28

any of the Protected Material, regardless of the medium (hardcopy, electronic, or otherwise) in which such Protected Material is stored or retained.

In the alternative, at the discretion of the Receiving Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it – unless such Protected Material is an original, in which case, the Receiving Party must obtain the Producing Party’s written consent before destroying such original Protected Material.

Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) within thirty (30) days of the aforementioned written request by the Designating Party that specifically identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected material (in any medium, including but not limited to any hardcopy, electronic or digital copy, or otherwise).

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda filed with the court in this action, as well as any correspondence or attorney work product prepared by Counsel for the Receiving Party, even if such materials contain Protected Material; however, any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

## **12. MISCELLANEOUS.**

**12.1. Right to Further Relief.** Nothing in this Stipulation and its Order abridges the right of any person to seek its modification by the Court in the future.

**12.2. Right to Assert Other Objections.** By stipulating to the entry of a Protective Order pursuant to this Stipulation, no Party waives any right it otherwise

1 would have to object to disclosing or producing any information or item on any  
2 ground not addressed in this Stipulation and its Order. Similarly, no Party waives  
3 any right to object on any ground to use in evidence any of the material covered by  
4 this Stipulation and its Protective Order.

5 12.3. This Stipulation may be signed in counterpart and a facsimile or  
6 electronic signature shall be as valid as an original signature.

7  
8 Dated: February 1, 2018

LAW OFFICES OF DALE K. GALIPO

9  
10 By: /s/ Dale K. Galipo

11 Dale K. Galipo,  
12 Attorney for Plaintiff  
13 ANGELA HERNANDEZ, individually and  
14 as a successor in interest to Steven Schiltz,  
deceased

15 Dated: February 1, 2018

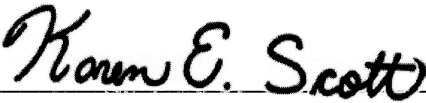
Michael E. Gates, City Attorney  
CITY OF HUNTINGTON BEACH

17 By: /s/ Jemma E. Dunn

18 Jemma E. Dunn, Sr. Deputy City Attorney  
19 Attorney for Defendants  
20 CITY OF HUNTINGTON BEACH

21 IT IS SO ORDERED.

22  
23 DATED: February 15, 2018



24 KAREN E. SCOTT  
25 United States Magistrate Judge  
26  
27  
28